IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 502 OF 2001

IN

WRIT PETITION NO. 2374 OF 2000

SHRIKANT V. GAWAS ... APPELLANT
(Orig. Petitioner)

Versus

Tulsiani Chambers Premises
Co-operative Society Ltd. ... Respondent
(orig.Respondent)

Mr. N.M.Ganguli for the appellant.

Mr. Rajesh Gehani for Respondent.

CORAM: D.K.DESHMUKH &
J.H.BHATIA,JJ.
DATE : 4th September, 2007.

P.C.

1. By this Appeal, the appellant challenges the order passed by the learned Single Judge of this Court in Writ Petition No.2164 of 2000. The facts that are

material and relevant for deciding this Appeal are that the respondent filed Complaint (ULP) No.158 of 1987 under the Unfair Labour Practices Act before the Labour Court making a grievance about the termination of his service by the respondent-Co-operative Society. The grievance of the employee-appellant was that his services have been terminated without complying with the provisions of Section 25-F of the Industrial Disputes Act. One of the objections raised on behalf of the respondent Co-operative Society was that it is not an "industry" for the purpose of the Unfair Labour Practices Act and, therefore, the complaint is not maintainable. The Labour Court dismissed the complaint holding that the appellant has not been able to prove that the respondent is guilty of unfair labour practice. The Labour Court however, did not record any finding on the aspect whether the respondent-Society is an "industry". The order of the Labour Court is dated 29.10.1997. Against that order, a revision was preferred before the Industrial Court by the appellant. That Revision was registered as Revision Application (ULP) No.194 of 1997. It was decided by the Judgment dated 3.8.2000. The Industrial Court set aside the order of the Labour Court and held that the respondent-Society is guilty of unfair labour practices under Items 1(b) and (f) of Schedule IV and directed reinstatement of the appellant in service with 25% back

wages.

2. Against that order, Writ Petitions were preferred by both the sides. Both the Writ Petitions came to be disposed of by order dated 22.3.2001. The learned Single Judge modified the order passed by the Industrial Court and set aside the order granting reinstatement in service, instead directed the respondent to pay certain amount to the appellant. The present Appeal is, therefore, preferred by the appellant-employee challenging the order of the learned Single Judge setting aside the order granting reinstatement in service with 25% back wages.

3. We have heard learned Counsel for both the sides.

4. We find that it is an admitted position that before the Labour Court the respondent-Co-operative Society had contended that it is not an "industry" within the meaning of the Unfair Labour Practices Act and, therefore, the complaint is not maintainable. Really speaking, in view of the dispute raised by the respondent-Co-operative Society, the burden lay entirely on the complainant to lead evidence and prove that respondent is an industry. However, perusal of the order of the Labour Court shows that the Labour Court

framed issues wrongly and placed burden on the respondent-society. Because Unfair Labour Practices Act is a special legislation and because the Labour Court and the Industrial Court exercising jurisdiction under the Act are Courts of limited jurisdiction, the burden is always on the complainant first to establish that those Courts have jurisdiction to entertain the complaint. The Labour Court, after casting burden to prove, wrongly on the respondent Society declined to decide that issue on the ground that the respondent-society has not led any evidence on that point. Perusal of the order of the Industrial Court shows that the Industrial Court has not considered that issue at all. The learned Single Judge though has observed that in one matter he has held that Co-operative Society is not an industry, in this case, he has not recorded that finding because, according to him, there is no evidence. In our opinion, a Court of limited jurisdiction cannot get jurisdiction to decide the complaint only because an objection to its jurisdiction has not been raised. It is for that Court in each case to make enquiry to find out whether it has jurisdiction to entertain the complaint and the Court can assume jurisdiction only on recording a jurisdictional finding that it has jurisdiction to entertain the complaint. In that regard, such a Court would be justified in insisting upon every complainant

coming to it to make such averments in the complaint as would be necessary for the court to record a finding that it has jurisdict3ion to entertain the complainnt. Jurisdiction cannot be conferred on Court by consent of the parties, similarly Court cannot assume jurisdiction only because the other side does not raise objection to its jurisdiction. In the present case, we find that the Courts have made orders without recording a finding on the jurisdictional aspect. In our opinion, therefore, it will be appropriate to set aside the orders which are impugned in the appeal and to remit the matter back to the Labour Court to decide it denovo. In our opinion, therefore, the following order would meet the ends of justice :-

(i) The orders passed by the Labour Court, the Industrial Court and the learned Single Judge of this Court are set aside.

(ii) The Complaint (ULP) No.158 of 1987 is remitted back to the Labour Court. The Labour Court shall first recast the issues casting burden of proof on the complainant to establish that the respondent is an industry for the purpose of the Unfair Labour Practices Act and shall decide the complaint on merits in accordance with law in case the Labour Court finds that

respondent is an industry.

(iii) By consent of the parties, it is directed that the Labour Court shall permit the parties to amend their pleadings if the parties make an application for that purpose.

Appeal is disposed of.

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(D.K.DESHMUKH,J)

(J.H.BHATIA,J.)